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NANETTE IDA METCALF, ESQ., Managing Attorney\*\*  
MARTIN TANKLEFF, ESQ., Associate Attorney  
CHRISTOPHER DARDEN, ESQ., *Special Counsel\**  
JOSEPH D. MCBRIDE, ESQ., *of Counsel*  
MARC HOWARD, ESQ., *of Counsel*

# EXHIBIT A

**Metcalf & Metcalf, P.C.**

99 Park Avenue, 25<sup>th</sup> Floor  
New York, NY 10016  
646.253.0514 (*Phone*)  
646.219.2012 (*Fax*)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X

Capital 7 Funding,

*Plaintiff*

Docket No. 17-cv-2374

**Request for Certificate of Default**

- against -

Wingfield Capital Corporation, Prestige Investment  
Associates, Inc., d/b/a Prestige Investments USA,  
and First Choice Payment Systems, Inc., d/b/a 1st  
Choice Payments

*Corporate Defendants*

And

Burgis Sethna, a/k/a Seth Burgess, Heath  
Wagenheim, Joseph Rabito, Damian Laljie a/k/a  
Damian Laltie, and John Does 1 through 15,

*Individual Defendants*

-----X

TO: DOUGLAS C. PALMER, CLERK  
UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

Plaintiff in the above-captioned action request that defaults be entered against Defendant Heath Wagenheim pursuant to Rule 55(a) of the Federal Rules of Civil Procedure for failure to timely plead or otherwise defend this action as fully appears from the court file and the attached declaration of Nicholas Bowers, Esq.

Dated: Brooklyn, New York  
July 20, 2020

Respectfully Submitted,

/s/ \_\_\_\_\_

Nicholas Bowers, Esq.

Gary Tsirelman P.C.

*Attorneys for Plaintiff*

129 Livingston St.

Brooklyn NY 11201

Email: nbowers@gtmdjd.com



UNITED STATES DISTRICT COURT  
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**DECLARATION OF NICHOLAS BOWERS, ESQ.**

I, Nicholas Bowers, declare under penalty of perjury that:

1. I am an associate attorney with Gary Tsirelman, P.C., counsel to Plaintiff Capital 7 Funding in the above-captioned matter.
2. I submit this declaration pursuant to Rule 55.1 of the Local Civil Rules for the Eastern District of New York and in support of Plaintiff's request for a certificate of default against Defendant Heath Wagenheim ("Wagenheim").
3. This action seeks damages from Wagenheim for his conduct and direction of Defendants' fraudulent enterprise that defrauded Plaintiff.

4. Jurisdiction of this action is based upon 28 U.S.C. § 1331 because Plaintiff brings its claims, in part, under the laws of the United States, specifically 18 U.S.C. § 1961 through 1968 (the Racketeer Influenced and Corrupt Organizations (“RICO”) Act). This Court has supplemental jurisdiction of Plaintiff’s state law claims pursuant to 29 U.S.C. § 1367. This District is an appropriate venue pursuant to 28 U.S.C. § 1391, one or more of the Defendants resides in the Eastern District of New York and because this is the District where a substantial amount of the activities forming the basis of the Complaint occurred.

5. The Complaint was filed on April 20, 2017. ECF No. 1. Plaintiff filed an Amended Complaint on May 4, 2017. ECF No. 4. Pamela Kutoroff both inquired and confirmed that Wagenheim was not a member of the United States military and served a true and correct copy of the Amended Complaint was served on Wagenheim on June 2, 2017. *See Exhibit A*

6. Plaintiff sought a certificate of default against Wagenheim on June 27, 2017. ECF No. 16. The Clerk entered Wagenheim’s default on July 24, 2017. Plaintiff subsequently filed a Second Amended Complaint on August 31, 2017. ECF No. 26.

7. Wagenheim subsequently retained counsel and requested a pre-motion conference from the Court regarding a motion to dismiss the Second Amended Complaint. ECF No. 27. The Court issued an order on March 22, 2019 allowing all Defendants to file motions to dismiss.

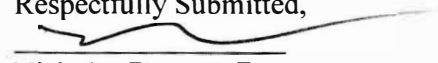
8. Wagenheim filed a motion to dismiss the Second Amended Complaint on June 21, 2019. The Court denied Wagenheim’s motion in its entirety on May 29, 2020. ECF No. 82.

9. Pursuant to Federal Rule of Civil Procedure 12(a)(4)(A), Wagenheim's responsive pleading was due filed or served on June 15, 2020. Wagenheim has not filed or served any responsive pleading or appeal after filing the motion to dismiss. Wagenheim's time to respond has expired.

10. This action seeks judgment against Wagenheim for compensatory damages, punitive damages, treble damages, costs, and reasonable counsel fees.

Dated: Brooklyn, New York  
July 20, 2020

Respectfully Submitted,



Nicholas Bowers, Esq.  
Gary Tsirelman P.C.  
*Attorneys for Plaintiff*  
129 Livingston St.  
Brooklyn NY 11201

## AFFIDAVIT OF PROCESS SERVER

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

CASE: 1:17-cv-02374-RRM-ST

CAPITAL 7 FUNDING

Plaintiff,

-VS-

WINGFIELD CAPITAL CORPORATION, et al  
Defendants.

I, PAMELA KUTOROFF, being first duly sworn, depose and say: that I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to perform said service.

SERVICE: I served HEATH WAGENHEIM  
NAME OF PERSON/ENTITY BEING SERVED

WITH SUMMONS IN A CIVIL ACTION; RIDER "A"; AMENDED COMPLAINT

by leaving with: HEATH WAGENHEIM DEFENDANT  
NAME RELATIONSHIP

AT: 135 NORDHAM STREET, WALDWICK, NJ 07463 ON: 6/2/17 AT: 9:02AM  
ADDRESS CITY/STATE DATE TIME

☒ Inquired if subject was a member of the U.S. Military and was informed they are not.

Thereafter copies of the documents were mailed by prepaid, first class mail on \_\_\_\_\_  
DATE

## MANNER OF SERVICE:

- ☒ **PERSONAL:** By personally delivering copies to the person being served.
- ☐ **SUBSTITUTED AT RESIDENCE:** By leaving copies at the dwelling house or usual place of abode of the person being served with a member of the household over the age of \_\_\_\_\_ and explaining the general nature of the papers.
- ☐ **POSTING:** By posting copies in a conspicuous manner to the front door of the person/entity being served.
- ☐ **NON-SERVICE:** After due search, careful inquiry and diligent attempts at the address listed above, I have been unable to effect process upon the person/entity being served because of the following reason(s):  
     ☐ Moved, forwarding address unknown, ☐ No longer employed at place of business, ☐ Vacant  
     ☐ Unknown at address, ☐ Incorrect place for service/bad address, ☐ Service cancelled  
     ☐ No does residing at premises ☐ Other: \_\_\_\_\_

SERVICE ATTEMPTS: Service was attempted on: (1) \_\_\_\_\_ (2) \_\_\_\_\_ (3) \_\_\_\_\_  
DATE TIME DATE TIME DATE TIME

DESCRIPTION: AGE: 32 SEX: M RACE: white HEIGHT 5'10" WEIGHT 200 HAIR brn OTHER N/A

SWORN TO BEFORE ME ON THIS 5 DAY OF 6 2017  
SIGNATURE OF NOTARY PUBLIC MY COMMISSION EXPIRES

PAMELA KUTOROFF PROCESS SERVER 6/5/17

MIRANDA R. PLATT  
NOTARY PUBLIC OF NEW JERSEY  
Comm # 50053305  
My Commission Expires 01/23/2022

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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*Plaintiff*

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*Corporate Defendants*

And

Burgis Sethna, a/k/a Seth Burgess, Heath  
Wagenheim, Joseph Rabito, Damian Laljie a/k/a  
Damian Laltie, and John Does 1 through 15,

*Individual Defendants*

-----X  
I, Douglas Palmer, Clerk of the Court of the United States District Court for the Eastern  
District of New York, do hereby certify that Defendant Heath Wagenheim has not filed an  
answer or otherwise moved with respect to the above-captioned action as fully appears from the  
court file herein and from the Declaration of Nicholas Bowers, annexed hereto. The default of  
Defendant Heath Wagenheim is hereby noted pursuant to Rule 55(a) of the Federal Rules of  
Civil Procedure.

Dated: Brooklyn, New York  
\_\_\_\_\_, 2020

DOUGLAS C. PALMER  
Clerk of Court

By: \_\_\_\_\_  
Deputy Clerk